

SALES AND USE TAX REVIEW COMMISSION

RECOMMENDATION PURSUANT TO P.L. 1999, C. 416

BILL NUMBER: S-1958

**DATE OF
INTRODUCTION: October 14, 2004**

SPONSOR: Senators Bryant & Buono

DATE OF RECOMMENDATION: November 12, 2004

IDENTICAL BILL:

COMMITTEE: Senate Budget and Appropriations

BACKGROUND:

From a national perspective, sales and use tax laws and administrative rules are so complex and burdensome, that the U.S. Supreme Court has determined that it is unconstitutional under the Commerce Clause to require sellers with minimal presence in the state, such as catalog sellers, to collect Sales Tax. There have been several efforts on a national scale over the past thirty-five years to resolve these issues and reduce the burden on business. In each case, for various reasons, these efforts failed.

In March of 2000, the most recent attempt to resolve these issues, the Streamlined Sales Tax Project, was created. It is a cooperative effort fostered by the National Conference of State Legislators, the National Governors Association and the Federation of Tax Administrators. It currently has 42 of the 45 states with sales taxes as participants. New Jersey has been a participant since the beginning.

In late November 2002, the Project approved the model legislation that forms the basis for the statutory amendments proposed in S-1958. It is the result of three years of detailed discussions between state representatives and the business community. States represented by both executive and legislative participants and businesses of all types including retailers, manufacturers, technology companies, trade associations, leasing companies, financial institutions, accounting and legal firms worked together to forge the changes proposed in the model conforming legislation.

This bill offers the historic opportunity to join 21 other states in adopting legislation that has the potential; by incorporating conforming language within the New Jersey Sales Tax Act; to resolve difficult issues of multi-jurisdictional sales tax complexities endured by business for decades. Not only would the passage of this bill offer immediate benefit to New Jersey vendors, but it positions New Jersey well should Congress act on federal legislation that would result on New Jersey receiving tax on sales into New Jersey by non-nexus remote sellers. (The most recent study estimates the current loss at \$430 million and it increases to \$800 million by 2008). It does this while preserving the state's ability to set its own tax policy based on its needs.

ANALYSIS:

The Commission engaged in a lengthy discussion regarding the advantages and potential (small) concerns of this bill, which would make changes (amendments, deletions, and new provisions) in New Jersey's sales and use tax laws in order to conform to the provisions in the Streamlined Sales and Use Tax Agreement (SSTA). In order to gain an understanding of the overall impact of this legislation in New Jersey, it heard testimony from a Division of Taxation representative who has been actively involved with the SSTA since its inception, who answered numerous questions regarding the precise content of the SSTA and explained why the Division so strongly and enthusiastically supports adoption of S-1958.

Based on the testimony and the content of the bill, the Commission members believe that some businesses will immediately benefit greatly if S-1958 is enacted. Enactment of S-1958 will probably not benefit smaller, mostly in-state vendors, to the same extent it does large multistate vendors. However, there are benefits for all New Jersey businesses regardless of their size.

Commission members expect that large interstate vendors will find it much easier to do business in multiple jurisdictions if a number of states conform their sales and use tax laws to the SSTA. For them, compliance will become simpler because of the statutory definitions that leave less room for interpretation. They will be especially beneficial if all the states where they have sales, adopt definitions, exemptions and procedures consistent with the SSTA.

Some Commission members expressed the opinion that a major advantage of S-1958, if adopted, is it will set the stage for collection of tax by “remote vendors,” i.e. those out-of-state vendors lacking sales tax nexus with New Jersey who make sales to New Jersey customers. They believe that uniform sales tax laws among the states will encourage them to register and collect tax on their remote sales, i.e. sales contracted via mail, phone, and internet, for delivery outside their own states. Division representative offered that more than 15 national retailers with dot.com and/or catalog companies have already come forward and voluntarily agreed to collect sales tax on remote sales in hopes of encouraging New Jersey’s participation in the SSTP. These agreements self destruct at the end of 2005 if New Jersey has failed to adopt conforming legislation. These few vendors have remitted approximately 10 million over the past 18 months. The Division’s witness also stated a number of additional companies through their legal representatives, that have approached the project and indicated they will voluntarily register with the states that have conforming legislation in place when the Governing States come into existence. It is anticipated that this will occur by July 1, 2005. It was acknowledged that this would level the playing field and serve as a means of protecting them from those “predatory remote vendors” who do not currently collect tax on New Jersey sales and therefore enjoy a competitive advantage over local storefront vendors.

There was discussion about the potential impact on revenues caused by the changes that would be effected by S-1958. Overall, the Commission members think that the fiscal impact of the changes in S-1958 will be revenue-neutral. This minimal impact

was attributed in large measure to the Division of Taxation's steadfast participation in every Streamlined Sales Tax Project meeting. The Commission noted that in certain specific portions of the SSTA, individual states are given the option to enact specific use-based exemptions or to carve out an allowable exclusion from certain exemptions.

The Commission members noted that sellers who use a "certified service provider" for processing their sales tax data and handling their filing compliance obligations will have the benefit of this service at no cost.

The Commission is aware that the bill does not directly address the reduced sales tax rates in UEZs and in Salem County. The Division of Taxation witness assured the Commission that the 3% rate in UEZs would not violate the SSTA because participation in the UEZ program is voluntary on the part of vendors located in a UEZ and indicated that, as this type of zone is common in many states, it had been discussed at SSTP meetings and the non-violation of the agreement was confirmed. (That is, vendors in a UEZ can choose not to become "qualified" UEZ vendors, who must satisfy various program requirements in order to enjoy its benefits, or, even after they have qualified, they can choose to opt out of the program and collect sales tax at full 6% rate.)

There were questions about how New Jersey's efforts to conform to the SSTA would affect our own state Legislature's ability to enact additional sales and use tax provisions, in response to changing needs within the State of New Jersey. The Commission understands that if the state is deemed to be not in conformity with the

SSTA, it will lose its voting rights in the quasi-governmental body. Therefore, if a new sales and use tax law does not conform, New Jersey would no longer be classified as a conforming state, even if all of its other sales and use tax provisions are strictly in conformity. It would also be deemed not in conformity, and thus no longer a voting member, if some statutory provision or administrative practice that is mandatory as a condition of conformity is declared unconstitutional by the New Jersey Supreme Court. Therefore, Commission members expressed concern about the lack of a severability clause that might allow the state to remain a voting member of the SSTA body, even if one statutory provision was declared invalid.

Therefore Commission members strongly support the Division's recommendation for inclusion of a severability clause, which would allow the state to remain a governing member if the state happens to enact a new provision that is deemed nonconforming by the SSTA group, or if a mandatory provision is invalidated by the New Jersey Supreme Court. This clause would allow the remainder of the SSTP amendments to remain in effect while a solution to the non-conforming position was rectified.

The Commission's discussion of S-1958 was the most lengthy one it has conducted in the years of its existence. As summarized in this Analysis, the Commission after review of the bill and consideration of the testimony provided, is convinced that this legislation is the most positive proposed Sales Tax amendment it has seen since being impaneled, offers benefits to the business community and should pave the way and eventually offer an opportunity to help solve a persistent budget deficit.

RECOMMENDATION: Support

COMMISSION MEMBERS FOR PROPOSAL: 9

COMMISSION MEMBERS AGAINST PROPOSAL: 0

COMMISSION MEMBERS ABSTAINING: 0